

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

AMALGAMATED TRANSIT UNION,)	
)	
Petitioner,)	
)	
v.)	Public Case No. 78-004
)	
BI-STATE DEVELOPMENT AGENCY,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

FINDINGS OF FACT

This case appears before the State Board of Mediation upon Amalgamated Transit Union, (hereinafter referred to as "Petitioner"), filing with this Board a Petition for Certification as exclusive bargaining representative for a unit composed of the employment classifications of station dispatcher, yard dispatcher, radio dispatcher, training instructor, and road supervisor, all within the employment of Bi-State Development Agency, (hereinafter referred to as "Respondent"). Said classifications in issue include approximately sixty-four individuals, the vast majority of which work within the State of Missouri. Respondent is a bi-state agency formed in conformity with statutes passed by the legislatures of Missouri and Illinois, pursuant to a compact between those states which was approved by the Congress of the United States, and whose principal function is to provide mass transportation to the greater St. Louis metropolitan area. The principal office of Respondent is located in the City of St. Louis, Missouri, at 3869 Park Avenue.

On October 13, 1978, a pre-hearing conference was held in this matter in St. Louis, Missouri. It was agreed at that time by both parties that the employment

classifications within the petitioned-for unit were all supervisory in character. In the absence of further agreement, a determination was made that a hearing would be necessary in order to resolve the dispute.

On November 27, 1978, in the St. Louis County Administration Building in Clayton, Missouri, the representatives of the respective parties met at a hearing before the State Board of Mediation to present evidence. The case was heard by a panel of three members from the Board, said panel being composed of one employer member, one employee member, and the chairman, a neutral member.

Due to the ambiguities inherent in any classification or title and as an aid to understanding, a description of the various duties of the classifications of employment in issue is set forth in separate paragraphs of this decision.

Station Dispatcher

The primary duty of a station dispatcher is to dispatch bus operators with the purpose of insuring that there is an operator for each assigned bus run at the various stations on the various shifts, to provide bus operators with necessary supplies, and to see that each bus commences its assigned run on schedule.

Yard Dispatcher

The classification of yard dispatcher is a newly created position. At the present time only one person occupies such a position of employment. The yard dispatcher has the responsibility of seeing that each operator operates the correct bus, as assigned, and that each assigned run is commenced on schedule.

Radio Dispatcher

A radio dispatcher receives calls and dispatches personnel and equipment through the use of telephone and radio communications.

Training Instructor

It is the basic duty of a training instructor to teach new personnel how to operate a bus in a safe and efficient manner. A training instructor also provides orientation and

training to automotive repairmen, cleaners, and information clerks, and participates in the examination and retraining of non-novice operators.

Road Supervisors

A road supervisor assists and directs bus operation in the field; investigates accidents; assures compliance with bus schedules; and reroutes buses due to accidents, fires or other reasons.

The evidence presented clearly establishes that none of the employment classifications in issue involve discretion in the hiring or the termination of employment of other employees of Respondent; nor do they involve the formulation or assistance in the formulation of Respondent's business policy. None of those classifications involve negotiation with other employees on behalf of Respondent. Those classifications in issue do not involve the adjustment or processing of grievances of other employees; nor do the said classifications include the power to promote or transfer, or to recommend the promotion or transfer, of other employees. Although personnel within the said classifications can and do report infractions of Respondent's rules committed by other employees, such personnel within said classifications are not empowered to impose discipline or even to recommend discipline as to other employees. All of the individuals within the classifications herein set out have limited authority to direct the work force. However, none of the concerned classifications involve the supervision of other supervisory personnel.

Remaining are four issues which the Board perceives as necessitating resolution:

1. Does the Board have jurisdiction to hear and decide this matter due to the fact that Respondent is a bi-state agency, jointly created under the laws of both Missouri and Illinois?
2. Are individuals within the classifications in issue "employees" within the meaning of Section 105.510, RSMo. 1969?

3. Do the several job classifications in issue have a "clear and identifiable community of interest" so as to make them a unit appropriate for bargaining purposes within the meaning of Section 105.500(1), RSMo. 1969?
4. May "supervisory" employees form and join labor organizations and present proposals to a public body relative to salaries and other conditions of employment through a representative of their own choosing.

CONCLUSIONS OF LAW

I

Does the State Board of Mediation have the jurisdiction to hear and decide this matter due to the fact that Respondent is a bi-state agency, created jointly under the laws of both Missouri and Illinois?

Section 105.525 RSMo. 1969 states:

Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation.

Furthermore, on June 8, 1979, this Board received from the Illinois Department of Labor Conciliation and Mediation Service a letter, signed by Mr. Walter W. Cary, chief labor conciliator, advising this Board that with regard to Respondent, Bi-State Development Agency, under present Illinois law there would seem to be "no jurisdictional problem" as to the inclusion of Illinois employees in a bargaining unit with Missouri employees.

In light of the above, the fact that the principal place of business of Respondent lies within Missouri, and also the fact that the vast majority of the individuals composing the job classifications in issue both work and reside in Missouri, it is the position of this Board that such jurisdiction as is necessary for it to hear and decide this matter does exist.

II

Are individuals within the classifications in issue "employees" within the meaning of Section 105.510, RSMo. 1969?

Section 105.510, RSMo. 1969, provides:

Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of Missouri schools, colleges and universities, of any public body have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing.

The question as to what the term "employee" includes within the meaning of that section has not been answered by statutory definition, nor has it been clearly interpreted by the courts of Missouri. However, the Kansas City Court of Appeals, in Golden Valley Memorial Hospital District v. Missouri State Board of Mediation, 559 S.W.2d 581,583 (Mo.App. 1977), has stated that "the term employee cannot be literally read to include every person on the payroll of a public body." That court, quoting from an opinion of the Connecticut Supreme Court, stated, in addition, that the narrower meaning of "employees" "excludes those persons whose duties involve acting directly or indirectly in the interest of their employer in relation to another employee." Id. But that explanation in itself is not so narrow as to prohibit more than a single interpretation. Without further exposition by the courts on this rather ambiguous area of the law and in absence of additional clarifying legislation by the General Assembly, it is the position of this Board that the term "employee" should be construed to exclude by implication only those higher level supervisory or managerial personnel from the coverage of Section 105.510, RSMo. 1969. Consequently, individuals with limited supervisory authority, such as those encountered in the case at bar, should be considered as employees within the meaning of Section 105.510, RSMo. 1969, and thus should have the right "to form and join labor organizations."

III

Do the several job classifications in issue have a "clear and identifiable community of interest" so as to make them a unit appropriate for bargaining purposes within the meaning of Section 105.500(1), RSMo. 1969?

"Appropriate unit" is defined in Section 105.500(1), RSMo. 1969 as:

[A] unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

It should be noted that the statute does not require that a bargaining unit be the most appropriate one, but only that it be an appropriate one.

It is the position of this Board that the competent and substantial evidence indicates a sufficiently clear and identifiable community of interest between the five employment positions in question. All of the concerned employees are in pay grades 17, 18, or 19. All of the concerned employees receive either premium pay or compensatory time-off for any overtime work. (Employees of Respondent classified above grade 19 receive no additional compensation or compensatory time-off for overtime work.) All of the employees within the positions in question are covered by identical pension, sick leave, and vacation programs. All of the said employees are directly involved in the "bottom-level" supervision of mass transit bus operations for Respondent. (That all of the employment classifications are "bottom-level" supervisory in character is indicated by the fact that although such employees have a limited authority to direct the work force, none of the concerned employees is vested with authority to supervise other supervisory personnel.) The evidence further indicates that there is a substantial amount of interchange of personnel, both on a permanent and a temporary basis, among and between the five job classifications in question.

IV

May "supervisory" employees form and join labor organizations and present proposals to a public body relative to salaries and other conditions of employment through a representative of their own choosing? Obviously, the essential question here is whether or not "supervisors" may form and join labor organizations.

It has been and is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise, because of a lack of community of interest. That problem, however, does not confront this Board in the case at bar. Petitioner has pledged that if it is indeed successful in its organizational attempt, Petitioner will establish a separate local union which will encompass only those job classifications in question and which will have responsibility for the direction of affairs and handling of grievances of the employees within those classifications only. Furthermore, in the absence of stipulation, it is not beyond dispute that the employees in question are "supervisors" within the technical meaning of that term. Western Missouri Public Employees, Local 1812 and Missouri State Council 72, AFSCME v. Jackson County, Missouri (Department of Corrections), Public Case No. 90; St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO, v. City of St. Louis, Missouri, Public Case No. 76-013.

It is the position of this Board that such low level "supervisors" as those encountered in the case at bar should have a right to form and join labor organizations. All such employment positions in issue involve a limited authority to direct the work force, but such positions do not involve the supervision of other supervisory personnel. In addition, the competent and substantial evidence tends to indicate that these "supervisors" concerned are more employee-oriented than managerial or confidential in character. But it is also the position of this Board that while such "supervisors" should

have a right to form and join labor organizations, that right should be limited to the extent that bargaining units composed of such "supervisors" should not be included in and should be kept separate and distinct from bargaining units including those employees whom they supervise.

DECISION

It is the responsibility of this Board to consider the public interest as a material factor in selecting appropriate bargaining units, and it is fully aware of the difficulties that might arise if supervisory employees are represented by the Petitioner. However, this Board is obliged by law to determine the appropriate unit and, having done so, shall proceed to the required election.

It is the decision of the State Board of Mediation that an appropriate unit of employees of Respondent, Bi-State Development Agency, is as follows:

All station dispatchers, yard dispatchers, radio dispatchers, training instructors, and road supervisors.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by a local of Petitioner, Amalgamated Transit Union.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fifteen (15) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Dated this 31st day of July, 1979.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Richard Mantia
Richard Mantia, Employee Member

/s/ H. R. Scott
Harry R. Scott, Employer Member